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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Deployment of Wireline Services Offering) CC Docket Nos. 98-147 *et al.*
Advanced Telecommunications Capability)
et al.)

To: The Commission

**COMMENTS OF THE PAGING AND MESSAGING ALLIANCE
OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Paging and Messaging Alliance ("PMA") of the Personal Communications Industry Association ("PCIA")^{1/} hereby submits PMA's comments in response to the *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding.^{2/}

^{1/} PCIA is the international trade association created to represent the interests of both the commercial and private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz frequency bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

^{2/} *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147 *et al.*, Memorandum Opinion (continued...)

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Introduction

In the NPRM, the Commission proposes rules that would establish an "optional alternate pathway" for incumbent local exchange carriers ("ILECs") to provide certain "advanced services." Specifically, the Commission is considering ruling that an advanced services affiliate of an ILEC that meets certain structural separation and non-discrimination requirements will be deemed a non-incumbent LEC. As such, the separate advanced services affiliate could potentially be able to operate free of the requirements of Section 251(c) of the Communications Act of 1934 as amended (the "Communications Act").^{2/}

PMA supports efforts by the Commission to create a regulatory environment that will favor the provision of advanced services. However, it is absolutely essential for the Commission to remain vigilant in its enforcement of the pro-competitive provisions of the Telecommunications Act of 1996 (the "1996 Act")^{4/} because there is no better way in the long run to promote innovative services than to foster increased competition.^{5/}

^{2/} (...continued)
and Order and Notice of Proposed Rulemaking, FCC 98-188, released August 7, 1998.

^{3/} 47 U.S.C. Sections 151 *et seq.*

^{4/} Pub. Law No. 104-104, 110 Stat. 56 (the "1996 Act")

^{5/} As the Commission is aware, assuring fair and non-discriminatory interconnection for commercial mobile radio service ("CMRS") carriers is a major component of PCIA's "Agenda for a Wireless America."

An ILEC Affiliate Has Interconnection Obligations

The Commission's *First Report and Order* in the *Local Competition* proceeding ^{6/} established important CMRS interconnection principles that are essential to promote fair competition. Among other things, the Commission ruled that (1) a LEC cannot charge a CMRS carrier for the portion of an interconnection facility used to deliver the LEC's own traffic for local termination. ^{7/} and (2) the LEC must pay reciprocal compensation to the CMRS carrier for traffic that originates on the LEC network and is terminated locally by the CMRS carrier. ^{8/} As far as PMA's members are concerned, these two aspects of the CMRS interconnection scheme are among the most important actions taken by the Commission in the wake of the 1996 Act. By providing CMRS carriers relief from unwarranted facility charges and compensation for the delivery of LEC traffic, the Commission took critical steps toward leveling the playing field and thereby fostering a wireless industry capable of providing meaningful competition.

PMA is concerned that an ILEC which establishes a separate advanced services affiliate will take the position that traffic originating on the facilities of the affiliate which transits the LEC network to a CMRS carrier is not "LEC-originated

^{6/} *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 (1996), *aff'd in part, rev'd in part*, *Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8th Cir 1997), *cert. granted sub nom., AT&T v. FCC, et al.*, 139 L. Ed. 2nd 867, 118 S. Ct. 879 (1998).

^{7/} See 47 C.F.R. Section 51.703(b).

^{8/} See 47 C.F.R. Section 51.703(a).

traffic” for interconnection purposes. More and more traffic over time will be deemed to originate with the advanced service affiliate, and less will originate with the ILEC. The Commission must take care not to undermine the reciprocal compensation obligations of the Act. All LECs, including the separate affiliate, have obligations under Section 251(b)(5) of the Communications Act, have obligations to establish reciprocal compensation arrangements. These obligations have been properly recognized by the Commission as critical components of the emerging competitive market.

As has been noted in prior PMA filings with the Commission, the process of bringing certain ILECs to the table to reach interconnection agreements has been a difficult one. The agency needs to make clear at the outset that traffic which originates with the separate advanced services affiliate will be deemed by the Commission to be “LEC-originated traffic” under the interconnection rules.

Substantial Compliance With Interconnection Obligations Should Be A Prerequisite

The Commission has made progress in its efforts to implement the pro-competitive provisions of the 1996 Act. In some instances, however, the Commission’s rulings have been challenged, thwarted or simply ignored by ILECs.^{9/} Thus, despite the

9/ For example, several LECs joined together to seek a stay of the December 30, 1998 clarifying letter of A. Richard Metzger, Jr. in CCB/CPD Docket No. 97-24 which confirmed that paging carriers have a right to relief from charges for interconnection facilities used to deliver LEC-originated traffic, and confirmed that the relief extends to both traffic sensitive and non-traffic sensitive charges. Although no stay has been issued, certain LECs continue to assess the prohibited charges.

Commission's efforts, the public interest benefits of the 1996 Act have not been fully realized.

Under these circumstances, the Commission must take steps to assure that the actions being proposed in this proceeding will not undermine the core protections embodied in the 1996 Act. More specifically, the Commission must see to it that the "alternate pathway" being offered to the ILECs is not used by them as an escape route from the interconnection obligations that have been established. The Commission can accomplish this by requiring an ILEC to demonstrate that it is in substantial compliance with its interconnection obligations **prior to** being deemed eligible to establish an advanced services subsidiary that will operate free from the obligations of Section 251(c) of the Communications Act.

By adopting PMA's suggestion, the Commission will be taking the same approach that the Congress adopted when it set prerequisites that had to be met before a Regional Bell Operating Company ("RBOC") would be allowed to offer in-region interLATA services. By adopting the competitive checklist, Congress sought to harness in a constructive manner the desire of RBOCs to provide long distance services in order to encourage the RBOCs to open up the local loop. In a similar vein, requiring ILECs to demonstrate that they are in substantial compliance with their interconnection obligations as a prerequisite to receiving the beneficial regulatory treatment they are seeking in this proceeding would harness in a constructive fashion their desire to provide advanced services.

ILECs should not object to this requirement. As far as PMA knows, all of the ILECs contend that they are in full compliance with their interconnection obligations. If this were the case, then they would not be disadvantaged by the proposed condition. On the other hand, if they object they will be confirming PMA's perception that there are serious interconnection compliance issues that require the attention of the Commission. This confirmation will serve to underscore the need for the approach PMA is suggesting.

Conclusion

Based upon the foregoing discussion, PMA urges the Commission to accord ILECs the ability to offer advanced services through a separate **only if** steps are taken to assure that the critical interconnection obligations of the ILECs are not undermined in the process.

Respectfully submitted,

THE PAGING AND MESSAGING ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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September 25, 1998

CERTIFICATE OF SERVICE

I, Michelle A. Harris, hereby certify that I have on this 25th day of September, 1998, caused a true and correct copy of the foregoing Comments of The Paging and Messaging Alliance of The Personal Communications Industry Association be sent by hand delivery, to the following:

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